

## **REMARKS**

These amendments and remarks attend to all outstanding issues in the Office Action mailed June 1, 2007. Claims 5-9 and 11-16 are pending in the application.

Claims 5, 8 and 13 have been amended to recite a donut that “contains less than about 1 wt % dried milk”. Claim 13 has been further amended to recite a step of ‘substituting a wheat protein isolate for dried milk’. Support for these amendments may be found, for example, in paragraphs [0051]-[0053] and FIGS. 1-3. Claim 13 has also been amended to change “cooking said food product by contacting the food product with oil or fat” to “contacting the food product with oil or fat during cooking of the food product”. Support for this amendment may be found, for example, in original claims 13 and 16 and in paragraphs [0032] and [0035]. Claims 7, 9, 11, 12, 15 and 16 have been amended to utilize wording that is consistent with amendments to the independent claims. No new matter has been added.

### **Claim Rejections 35 U.S.C. § 112 – Written Description**

Claims 13-16 stand rejected under 35 U.S.C. § 112, second paragraph, as failing to comply with the written description requirement. Specifically, the Examiner rejects the phrase “an unhydrated wheat protein isolate” as a limitation that is not supported by the original disclosure “because there is nothing in the specification about the protein being unhydrated. Adding water to the mix is not connected or related to the protein being unhydrated.” (Office Action of June 1, 2007, p. 2) The objectionable phrase has been removed from the claims without prejudice. Reconsideration and withdrawal of the 112 rejection is respectfully requested.

### **Claim Rejections 35 U.S.C. § 112 – Enablement**

Claims 13, 14 and 16 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. The Examiner states, “Applicant claims a method of preparing a food product having a reduced fat content wherein the product is baked. However, applicant does not teach how the fat content is reduced when the product is baked. The specification discloses that the addition of isolate[d] wheat protein reduces the adsorption of the frying fat medium into the fried food product to reduce the fat content. However, there is no disclosure of how the fat

content is reduced when the product is baked. When the product is baked, there is not adsorption of the frying fat medium; thus, how is the fat reduced in a baked product?” (Office Action of June 1, 2007, p. 2)

As discussed in the Response filed September 28, 2006, baked food products may contact oil or fat that is used to grease a cooking surface. It is well known that conventional baked goods will adsorb and absorb a portion of this oil or fat during cooking. In fact, an entire cooking spray industry (e.g., Pam®) has emerged to replace high-fat products, such as butter, margarine and lard, with lower-fat alternatives, which reduce the harmful health effects of such fat adsorption/absorption.

The present specification clearly discloses a cooking process, employing either frying or baking, where a food product comes into contact with fat or oil. See, for example, [0032] and [0035]. Those of ordinary skill in the culinary arts will understand from the specification that addition of isolated wheat protein to a food product will reduce the amount of fat that is absorbed from a cooking medium, including a cooking medium used to grease a cooking surface that is used for baking.

Where “[t]he test of enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation.” *United States v. Telectronics, Inc.*, 857 F.2d 778, 785, 8 USPQ2d 1217, 1223 (Fed. Cir. 1988), Applicants submit that claims 13, 14 and 16 meet the enablement requirements of 112, first paragraph. Reconsideration and withdrawal of the 112 rejection is respectfully requested.

Regarding claim 16:

The Examiner further rejects claim 16 as being ‘vague and indefinite because it contradicts and does not further limit claim 13. Claim 13 recites the food product is cooked by contacting it with oil or fat, but claim 16 recites baking.’ In response to the argument that it is common to grease a pan with oil or fat, the Examiner states, “claim 13 does not recite greasing; it specifically states ‘cooking by contacting with oil or fat’. Greasing the pan does not cook the product.” (Office Action of June 1, 2007, p. 3)

Amended claim 13 recites “contacting the donut with oil or fat during cooking of the donut”, and amended claim 16 specifies that “contacting the donut with oil or fat during cooking comprises baking said donut on a greased cooking surface.” Applicants’ submit that any contradiction that may have existed between claims 13 and 16 has been remedied by amendments presented herein. Accordingly, reconsideration and withdrawal of the 112, first paragraph, rejection is respectfully requested.

### **Claim Rejections – 35 U.S.C. § 102**

Claims 5-7 stand rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,403,610 granted to Murphy *et al.* (hereinafter, “Murphy”).

To anticipate a claim, a reference must teach every element of the claim and “the identical invention must be shown in as complete detail as contained in the... claim.” *MPEP 2131* citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 2 USPQ2d 1051 (Fed. Cir. 1987) and *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913 (Fed. Cir. 1989). Murphy does not teach every element of Applicants’ claims.

Murphy discloses doughs and batters for producing reduced-fat and fat-free baked goods. The doughs and batters contain hydrated polysaccharide hydrocolloids and hydrated insoluble fiber, and optionally hydrated protein, such as wheat protein isolate or wheat gluten. The “hydrated polysaccharide hydrocolloids may be used in place of fat at a rate of about one part hydrocolloid for each 40 to 60 parts of fat.” (col. 4, lines 44 - 46)

Murphy replaces fat with hydrated polysaccharides, and leaves milk solid concentrations unchanged relative to traditional baked goods. In contrast, the present compositions incorporate relatively small amounts of dried milk, because wheat protein isolate is used to replace a portion of the dried milk. As a result of these fundamental differences, Murphy does not disclose compositions containing less than about 1 wt % dried milk, as required by amended claim 5. The minimum amount of milk solids used in Murphy’s examples is about 1.22 wt % (Example 3) – calculation based on the aqueous dispersion from Example 2 – and most of Murphy’s Examples

include not only the aqueous dispersion from Example 2 but additional non-fat dried milk or liquid milk (which contains about 12% milk solids).

Murphy fails to disclose every element of independent claim 5 "...in as complete detail as contained in the...claim." Namely, Murphy does not disclose a donut containing less than 1 wt % dried milk. Further, Murphy does not disclose a cake donut, as recited in claim 7. For at least these reasons, Murphy cannot support a case of anticipation. Withdrawal of the 35 U.S.C. § 102(b) rejection and reconsideration of claims 5-7 is respectfully requested.

### **Claim Rejections – 35 U.S.C. § 103**

The following is a quotation from the MPEP setting forth the three basic criteria that must be met to establish a *prima facie* case of obviousness:

First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2142, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Claims 8, 9, 11 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,244,980 granted to Fischer *et al.* (hereinafter, "Fischer") in view of Murphy.

Fischer discloses yeast-raised dough products that are economically advantageous because a portion of hard flour is replaced with bleached soft wheat flour and/or bleached clear flour. Due to the addition of sodium calcium alginate, the yeast-raised dough compositions have gas retention and structure forming properties comparable to those of compositions using hard wheat flour (col. 1, lines 49-54).

Like Murphy (discussed above), Fischer fails to disclose compositions containing less than about 1 wt % dried milk. Fischer's compositions are disclosed as containing "from about 1.5 to about 2.0 parts by weight of milk solids" (col. 3, lines 12-13), and Examples 6 - 9 incorporate more than 2.0 parts by weight milk solids.

Fischer and Murphy, alone or in combination, fail to disclose every element of Applicants' amended claims. For at least this reason, a *prima facie* case of

obviousness cannot stand. Reconsideration and allowance of claims 8, 9, 11 and 12 is respectfully requested.

Claims 13-15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fischer in view of U.S. Patent No. 6,042,866 granted to Greene *et al.* (hereinafter, “Greene”).

Greene discloses a composition for preparing instant fried noodles that includes a farinaceous base ingredient, a proteinaceous ingredient and water. The dough may be formulated “...so that is contains an added proteinaceous substance ingredient, such as gluten in particular, such as in an amount of up to and inclusive of about 5% by weight...” (col. 1, lines 50-53).

The Examiner states, “[i]t would have been obvious to add wheat protein in the amount taught by Greene et al to the Fischer et al composition...It would have been obvious to use wheat protein isolate when desiring a more concentrated and purer protein material.” (Office Action of June 1, 2007, p. 5) These comments, however, appear to contradict one another.

It is not obvious to “add wheat protein in the amount taught by Greene” if a “more concentrated and purer protein material” is used. Use of a concentrated or purified ingredient generally reduces the amount of the ingredient required in a recipe.

Neither Fischer nor Greene disclose ‘substituting a wheat protein isolate for dried milk’, as required by amended claim 13 (and claims dependent thereon). Based at least on the absence of this element, a case of *prima facie* obviousness cannot stand.

Greene and/or Fischer also lack a teaching or suggestion of how a proteinaceous ingredient would be incorporated into a donut. Would the protein ingredient merely be added as an additional ingredient? Or would it replace a portion of an existing ingredient? If so, which existing ingredient would it replace? As dried milk is not an ingredient found in instant noodles (col. 2, lines 30-31), or otherwise mentioned by Greene, there is clearly no indication that the proteinaceous ingredient should replace a portion or the whole of dried milk in a donut (claim 13). Further, Fischer - seeking to reduce economic costs associated with making a yeast-raised doughnut - teaches away from incorporation of expensive ingredients (e.g., protein isolates, and particularly highly purified protein isolates) into a donut composition.

Fischer and Greene, alone or in combination, fail to disclose every element of Applicants' amended claims, do not provide a teaching or suggestion for the combination proposed by the Examiner, and actually teach away from such modifications. Reconsideration and allowance of claims 13-15 is respectfully requested.

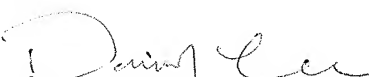
In view of the above Remarks, Applicants have addressed all issues raised in the Office Action dated June 1, 2007, and respectfully solicit a Notice of Allowance. Should any issues remain, the Examiner is encouraged to telephone the undersigned attorney.

Authorization to charge fees associated with a one-month extension of time is submitted herewith. If any additional fee is deemed necessary in connection with this Response, the Commissioner is authorized to charge Deposit Account No. 12-0600.

Respectfully submitted,

LATHROP & GAGE LC

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David J. Lee, Reg. No. 41,935  
4845 Pearl East Circle, Suite 300  
Boulder, CO 80301  
Tele: (720) 931-3021  
Fax: (720) 931-3001